

MTI TO TABLE PROPOSED AMENDMENTS TO THE CONSUMER PROTECTION (FAIR TRADING) ACT AND HIRE PURCHASE ACT IN PARLIAMENT

The Ministry of Trade and Industry (MTI) will be tabling a bill in Parliament on 14 February 2012 for the proposed amendments to the Consumer Protection (Fair Trading) Act (CPFTA) and the Hire Purchase Act (HPA).

2 The amendments are aimed at enhancing the protection of consumers from unfair practices, while ensuring that undue burden is not imposed on businesses. (Details on the proposed amendments are found in **Annex B**). The benefits of the law are as follows:

- Makes the transactional process between buyer and seller more open and transparent, with clearer rules on the burden of proof, and more certainty about the recourses available.
- Assures both locals and tourists that the products they buy are of good quality, and improves the image of the retail industry in Singapore.
- Fosters good business practices among retailers.

3 MTI conducted a public consultation exercise from 20 December 2010 to 31 January 2011 to obtain feedback on the proposed amendments. In total, about 50 responses were received from a wide ranging group of stakeholders. These included members of public, small retailers, MNCs, CASE and the Hire Purchase, Finance and Leasing Association of Singapore. In addition, MTI also conducted focus group sessions in the later part of last year with industry representatives such as retailers and motor traders. The feedback focused on clarification of terms, scope of coverage of the proposed Lemon Law regime, specifying procedures and conditions for invoking the new provisions, and specific arrangements for hire purchase agreements, especially those involving motor vehicles.

4 MTI would like to thank all who provided feedback for their thoughtful comments. Detailed responses to the feedback can be found in **Annex A**. As most of the respondents were supportive, we are attaching responses to the feedback that have raised concerns.

5 The proposed amendments are expected to come into force in September 2012.

MINISTRY OF TRADE AND INDUSTRY
14 FEBRUARY 2012

Annex A - Response to Public Feedback Which Raised Concerns

S/N	Public feedback	MTI's response
AMENDMENTS TO THE CONSUMER PROTECTION (FAIR TRADING) ACT AND HIRE PURCHASE ACT		
Definitions and Conditions		
1	<p>The definition of DEFECTIVE has to be more precise. Definition of DEFECTIVE must include "any unusual, marginally defective or abnormal parts which seemingly looks good, and parts which you don't see in similar products in other brands that deteriorates the performance of a product".</p> <p>Clarification is sought with respect to the terms of "minor defects" and "durability" as referred to in Section 7A(4) of the draft HPA bill as these terms can potentially allow considerable scope for dispute.</p> <p>Tan TH (Consumer)</p>	<p>The Lemon Law regime does not use the word "defective". Instead, the Lemon Law provisions apply in the event of non-conformity to an applicable contract (e.g. a sale of goods contract) when express or implied terms of the contract are breached at the point of delivery, e.g. the statutory implied term for satisfactory quality.</p> <p>These terms ("minor defects" and "durability") are not new to the law. These terms proposed in section 7A(4) of the HPA can also be found in section 14(2B) of the Sale of Goods Act (SGA) and section 18(3) of the Supply of Goods Act (SUGA), and are similar to English law, which in turn forms the basis for the law in most other Commonwealth jurisdictions. This has the advantage that the implied terms will be consistent for the different types of contracts and allows reference to case law and academic commentaries interpreting similar provisions elsewhere. If the terms are modified or defined in greater detail, it may affect reliance on such precedents.</p>
2	<p>Specify the number of times that the retailer is entitled to repair the product before the retailer replaces faulty product with a brand new product.</p> <p>Aaron Ong (Consumer)</p>	<p>Given the diverse range of products, it may not be possible to specify a reasonable number that can apply to all goods. Nevertheless, the supplier is required to repair or replace within a reasonable timeframe, and without causing significant inconvenience to the buyer. Otherwise, the buyer is entitled to ask for rescission or reduction of price.</p>
3	<p>Request for exchange/refund should be made in writing and not verbally. Service providers should make this requirement known to the consumer clearly and have their acknowledgement as proof that this fact was made known to the</p>	<p>There is currently no writing requirement whether under existing law (i.e. common law right to reject goods and get a refund) or the proposed lemon law. This is also not required in similar jurisdictions such as the UK.</p>

	<p>consumer so that there is no dispute about this. There should be a specific form for this.</p> <p>Charles Arokiasamy (Consumer)</p>	<p>Requiring written notice could prejudice the consumer since failure will presumably mean that consumer will be taken not to have invoked the lemon law remedies. There is then a possibility that the consumer may lose his right to reject under common law as a result of delays arising from seeking repairs or replacement.</p> <p>The requirement for notice to be in a specific form by the supplier is presumably intended to ensure that the consumer is informed of the requirement for writing to exercise his rights under the new lemon law. However it will be burdensome on businesses and would not be practical to require such notice for every consumer transaction.</p>
4	<p>The proposed amendments make clear that any refund amount may be reduced to take into account the use that the buyer had of the goods. However, with regards, to the remedy available to the buyer for replacement of goods, it is not clear whether the transferor is under an obligation to replace the product with a brand new product, or that the replacement may be a used product, especially when the buyer has had substantial use of the product.</p> <p>Canon Singapore (Retailer)</p>	<p>The law should not specify whether the replacement should be new or used since the circumstances, e.g. condition of the goods at the time of replacement, may differ in each case. If the buyer is not satisfied with the replacement, he may reject the replacement and argue that he is entitled to seek a second tier remedy (i.e. reduction in price or rescission). If the replacement was unsatisfactory in the circumstances of the case (i.e. having given allowance for wear and tear, it was not equivalent to the goods bargained for in the contract), a court is likely to allow the second tier remedy.</p> <p>To avoid further action, the seller should consider whether his dispute resolution policy is effective.</p>
5	<p>Under Section 12D, the seller is compelled to reduce the purchase price of the Goods, or accept a rescission of the sale contract and reimburse the consumer, even where several months (up to six (6) months) has elapsed after delivery of the Goods, if repair or replacement of the goods is 'impossible', or the costs of doing so is 'disproportionate' to a reduction in the purchase price of the goods.</p>	<p>There must first be a proven defect for the lemon law regime to apply. The court will presume that a defect proven to exist within six months of delivery existed at the time of delivery, unless the seller can prove otherwise, or if such a presumption is incompatible with the nature of the goods (e.g. goods with a short life span).</p> <p>Under existing law (i.e. Sale of Goods Act), which consumers can already choose to exercise, a buyer can reject the goods</p>

	<p>In the first place, there is no objective standard applied for ascertaining "impossibility", 'disproportionate', or 'significant inconvenience' and this ambiguity promotes unnecessary disputes and litigation. Furthermore, the risk of the ambiguity in these broad statements is obviously transferred to the seller.</p> <p>Next, several Goods have short consumer attention or life spans in today's market. Ordinarily, the consumer may have wanted to upgrade to a newer more technological advanced model of Goods within a few months. Under the amendments however, there will be an increase in frivolous consumer complaints, as there is strong incentive for customers to insist that repair is (for e.g. 'impossible') after their several months of use, so that the consumer can benefit from a reduction in the price, or a reimbursement. As stated above, the seller will be hard-pressed to 'disprove' the consumer's allegations. The consumer has nothing to lose by making such frivolous complaints.</p> <p>M1 (Retailer)</p>	<p>and claim a refund <i>immediately</i> if the goods do not conform to the contract at the time of delivery. However, if buyers adopt the lemon law regime, they must first give the suppliers the opportunity to either repair or replace the goods.</p> <p>Reduction of price or rescission are available only if the repair or replacement are unavailable because it is impossible or disproportionate for the seller, or the seller fails to repair or replace within a reasonable time and without significant inconvenience to the buyer. These terms are not specified in detail as 'impossibility', 'disproportionate', or 'significant inconvenience' varies for different types of goods.</p> <p>There has been no report of any increase in frivolous actions in the UK following the implementation of a similar regime.</p>
6	<p>Notwithstanding provisions whereby the consumer is given a right to claim rescission with reimbursement, the amendments are curiously silent on whether, in such case, the consumer is obliged to return the Goods to the seller. This is a logical consequence of rescission of contract, and ought to have been spelt out in the proposed amendments, to avoid disputes.</p> <p>M1 (Retailer)</p>	<p>Although there is no definition of "rescission" in the proposed legislation, rescission is taken to mean returning the goods and refunding the purchase price, possibly with a discount for use.</p>
7	<p>Amendments should spell out that in the case of discounted or subsidized Goods premised on a consumer contract, the amount of discount or</p>	<p>The aim of rescission is to return the parties to the position they were in before the contract. Since the goods will be returned to the seller upon rescission, the</p>

	<p>subsidy should be repaid to the seller as a condition to the consumer's rescission of the contract.</p> <p>M1 (Retailer)</p>	<p>seller should return to the buyer the amount paid by the buyer.</p> <p>Proposed section 12B(5) provides that the reference to “the amount to be paid” is a reference to the purchase price of the goods. This refers to the actual amount paid by the buyer, as opposed to the value of the goods or listed price of the goods. Therefore the amount to be refunded by the supplier would already be less the discount.</p>
8	<p>The right to claim a refund based on the 'amount to be paid for the transfer of the goods' under Section 12D, is inappropriate. This amount is suggestive of the 'price' of the Goods at the date of delivery. Significant depreciation may have set in to diminish the market price of the Goods during the six (6) months period. However, the proposed amendments are silent on whether depreciation is a factor that can be taken into account in determining the value of the use the consumer has had of the Goods under Section 12D (3). It appears that the risk of depreciation has been transferred to the seller when it is not the seller, but the consumer, that is enjoying the use of the Goods.</p> <p>M1 (Retailer)</p>	<p>Proposed section 12D (3) states that if the transferee rescinds the contract, any reimbursement to the transferee may be reduced to take account of the use he has had of the goods since they were delivered to him.</p> <p>There is no unfairness to the seller since the rescission is brought about by the fact that the goods supplied by the seller did not in fact conform to the contract at the point of sale, and the seller would have had the opportunity to repair or replace the goods. Based on existing common law, the court has sometimes refused to make any deduction for use because of the inconvenience which the buyer has already suffered in having to deal with the defective goods.</p>
9	<p>We note that in the amendments proposed in the Consultation Paper, it is unclear whether the amended Act will apply only to agreements made on or after the amendments come into force.</p> <p>We submit that in adherence to the rule of law and the importance of ensuring certainty, the proposed legislative amendments must clearly be stated to be of prospective effect rather than retroactive. The proposed amendments to the Act should therefore only apply to agreements made on or after the</p>	<p>The Proposed amendments to the HPA (relating mainly to implied terms) and new Part III of the CPFTA (relating to the new Lemon Law regime) will not apply to agreements made before the amendments come into force. The transitional provisions will be clearly provided in the legislation.</p>

	<p>amendment come into force.</p> <p>StarHub (Retailer)</p>	
10	<p>The amendments show a distinct legislative bias in favor of the consumer, and prejudice the sellers. In addition to there being no plausible justification for this transfer of the burden of proof, it will be close to impossible for the seller to disprove this presumption (for e.g. to prove damage to the Goods by the transferee within the six (6) months period) as the possession of the Goods is with the transferee.</p> <p>The six (6) month period stipulated in the proposed amendments is significantly inappropriate. We would propose that a one (1) month period is reasonable for common defects in Goods to manifest themselves through fair usage. The six (6) months period should only apply to latent defects which are not readily discernible notwithstanding a more prolonged use of the Goods.</p> <p>M1 (Retailer)</p>	<p>The supplier would have the technical know-how to assess and prove whether or not a defect is latent.</p> <p>As specified in section 12B(4)(a), the presumption in section 12B(3) (that defects which manifest themselves within 6 months of the date of delivery existed at the time of delivery) is rebuttable upon proof that the goods did conform at the date of delivery. In effect, this means that once the buyer shows that the defect manifested itself within 6 months, the seller will have the burden of proving that the defect only came into existence later.</p> <p>The six month period is not unreasonably long, such that it makes it difficult for the seller to prove that the defect was not present at the time of delivery. The same presumption can be found in EU laws.</p>
11	<p>With reference to the proposed Section 12D(1)(a) of the draft CPFTA bill provides that the transferor may be required to reduce the amount to be paid for the transfer of the goods in question to the transferee by an appropriate amount:</p> <p>First, it is not clear as to what constitutes an "appropriate amount".</p> <p>Second, in computing the "appropriate amount". It is not clear as to:</p> <p>(a) whether costs of wear and tear that would arise as a result of the transferee's usage or substantial usage of the car can be deducted from the "appropriate amount" to be reduced;</p>	<p>The "appropriate amount" of the reduction is not defined as the proper approach is to ask how much the consumer would have paid for the goods in their defective state. This is often identical to the amount of damages payable under the existing law, and which courts are already practiced in quantifying.</p> <p>Similar to the principles for calculating damages, the reduction in purchase price will not take into account of wear and tear, or time elapsed between delivery and remedy.</p>

	<p>(b) whether it is necessary to take into account of "the use the transferee has had of the goods since the goods were delivered to him" when computing the appropriate amount that needs to be reduced; and</p> <p>(c) whether an elapse of time from the date of delivery of the goods to the date as to when the invocation of the Reduction or Rescission Remedy Is made needs to be factored into the computation of the "appropriate amount".</p> <p>Third, It Is proposed that a range of factor be included in the text of the proposed Section 12D to provide indications as to the basis of computing an "appropriate amount".</p> <p>Hire Purchase, Finance and Leasing Association of Singapore (HPFLAS)</p>	
12	<p>Section 2 Interpretation CPFTA: Please include the definition of "court". When the Consumer Protection (Fair Trading) Act (CPFTA) was introduced, it was meant to cover low value consumer transactions which could be heard at the Small Claims Tribunal, hence only Small Claims Tribunal is defined in Section 2.</p> <p>Consumers Association of Singapore (CASE)</p>	<p>It will be clarified that Small Claims Tribunal has the powers under section 12F of the CPFTA. The jurisdiction of the Small Claims Tribunal under section 5 of the Small Claims Tribunals Act will remain unchanged. No definition of "court" is necessary because the definition in the Interpretation Act already applies. The words "court (other than the Small Claims Tribunal)" in section 7(4) of the CPFTA would already suggest that "court" includes the SCT unless otherwise stated.</p>
13	<p>Section 12B(4)(a):- This section seems to suggest that all goods accepted at point of delivery conformed at date of delivery. If so, this would be a loophole that retailers can exploit. Examples of such goods would be handphones, furniture and television sets, which retailers would urge consumers to check at the point of purchase or delivery.</p> <p>However, defective goods do not</p>	<p>Section 12B(4)(a) means that the presumption in section 12B(3) (that defects which manifest themselves within 6 months of the date of delivery existed at the time of delivery) is rebuttable upon proof that the goods did conform at the date of delivery. In effect, this means that once the buyer shows that the defect manifested itself within 6 months, the seller will have the burden of proving that the defect only came into existence later (i.e. after delivery).</p>

	<p>have to appear defective at point of delivery. If a bed frame looks normal at point of delivery but collapses after a few days, is the retailer obliged under this new legislation to repair or replace?</p> <p>Similarly, if a handphone hangs frequently after two months of usage, would the handphone be considered a lemon and the retailer obliged by law to repair or replace? If the retailer is not obliged to under both instances, the proposed legislation is flawed and the current situation would not be improved.</p> <p>Consumers Association of Singapore (CASE)</p>	<p>The feedback on section 12B(4)(a) relates to a case where the buyer actually accepts the goods with certain defects at the point of delivery. Section 14(2C) of the SGA concerns whether visual inspection would have detected the defect. If the consumer did in fact examine the goods and that examination ought to reveal the defect, he will be taken to have agreed to goods with those defects and cannot afterwards complain that those defects are in breach of the implied term of satisfactory quality. (In the case of sale by sample, he need not have actually examined the goods and will be taken to have agreed to defects which a reasonable examination would have revealed.)</p> <p>However, the buyer will not be taken to have accepted latent defects (i.e. defects which existed at the time of delivery but could not have been detected then) since examination would not have revealed the defect.</p>
14	<p>Section 12C(5) Repair or replacement of the goods: The CPFTA is to empower consumers to actively seek redress for themselves. Consumers would not be able to know what is a reasonable time or what is significant inconvenience. Please provide some examples. Otherwise, this ambiguity could result in excessive number of claims or premature claims being filed at the Small Claims Tribunal.</p> <p>Consumers Association of Singapore (CASE)</p>	<p>It would be impractical to define what is a “reasonable time” or “significant inconvenience” given the diversity of goods. Thus, Section 12C(5) provides that these issues are to be determined by the nature of the goods and the purpose for which the goods were acquired.</p> <p>The courts will interpret the provisions and determine disputes. Guidance given by MTI or CASE may be of limited use or even misleading since it would not bind or necessarily reflect subsequent decisions by the courts.</p> <p>Industry associations may adopt codes or guidance for their members as to appropriate dispute resolution practices. Industry standards and guidelines may also indirectly influence the court’s view.</p> <p>Courts may also refer to the related Explanatory Statement of the proposed Amendment Bill, Second Reading Speech in Parliament and Parliamentary debates when interpreting legislation. This</p>

		information is publicly available on the Parliament website (www.parliament.gov.sg).
15	<p>Section 12D(l)(a) Reduction of purchase price: We propose that this be a first-tier remedy, along with repair and replacement. Certain defects might exist but consumers should be given the option to live with the defect and accept a reduction in price. For example, a fan with a remote control which is not working or an air-conditioner which temperature could not be set at 22 degree Celsius or lower.</p> <p>Consumers Association of Singapore (CASE)</p>	<p>Currently, the consumer can choose to immediately rely on his rights under general law (e.g. Sale of Goods Act) to do so, as reduction of purchase price may, in effect, be enforced by claiming damages for breach of contract. Such damages would usually be based on the difference between the amount paid and the value of the defective goods.</p> <p>If the goods could be replaced or repaired, this may affect the issue of mitigation and costs. For example, if it would have been easier and cheaper to repair it, the damages granted may be limited to the cost of such repairs, or if the consumer refused a reasonable replacement and instead commenced proceedings, he may be penalised in costs. In practice, therefore, unless the consumer wants to reject the goods for a refund, it would be advisable for the consumer to allow the seller to provide repairs or replacement if they are likely to be successful.</p> <p>An advantage of the lemon law regime is that it gives the consumer a clear right to repairs and replacement, whilst setting a limit on unending repairs. It also avoids the possibility that the consumer may lose his right to reject the goods if he allows repair attempts, as the second-tier remedies of price reduction or rescission of contract can still be invoked.</p>
16	<p>Please clarify why a transferee in a sale by auction is not regarded as dealing as consumer -Paragraph 2.3. Explanatory Notes</p> <p>Consumers Association of Singapore (CASE)</p>	<p>References to dealing as a consumer in the proposed Lemon Law regime (proposed section 12A(2) of the CPFTA) is based on the Unfair Contract Terms Act, which do not include a buyer in a sale by auction or competitive tender.</p> <p>This is because in a sale by auction, goods are usually sold “as seen” and it would not be appropriate to impose some of the implied terms in such contexts.</p>

Cars or Hire Purchase	
<p>17</p>	<p>The obligations under the Proposed HPA Implied Terms should be imposed on the Responsible Parties and not the auto finance providers.</p> <p>It then becomes apparent that the Proposed HPA Implied Terms causes exceptional and considerable hardship to auto finance providers who are typically not well-acquainted with the product knowledge of the cars, and who have only contributed financing in the whole hire purchase of car transaction. In view of the above, the HPFLAS would like to call for MTI to re-consider the applicability of the Proposed HPA Implied Terms to auto finance providers.</p> <p>Hire Purchase, Finance and Leasing Association of Singapore (HPFLAS)</p>
<p>18</p>	<p>Under a hire purchase agreement, the finance company pays the seller and becomes the owner of the vehicle. The hirer does not become the owner until the final payment.</p> <p>As owner of the vehicle, the finance company is already bound by the implied terms under the existing HPA, including merchantability. The proposed amendment merely updates satisfactory quality for merchantability, for consistency with the SGA and SUGA.</p> <p>Section 7, which imposes liability on the owner even for agents of the dealer, is already in existence.</p> <p>The position is similar in UK, Ireland and NZ, where the finance company is held liable until ownership is transferred to the hirer.</p>
<p>18</p>	<p>Whilst consumers should be afforded greater protection under CPFTA and HPA, non-consumers (i.e. persons who do not deal as consumers), who possess stronger bargaining power than the consumers in concluding contracts, should not be afforded any protection even if protection is limited to that of warranties. Further, the whole purpose of introducing lemon laws is to introduce consumer protection laws that provide remedies for the consumers and not the non-consumers.</p> <p>Accordingly, HPFLAS submits that there is no rationale behind enacting the proposed Section 7C of the draft HPA bill ("Section 7C1 that provides that a breach of the implied terms in sections 7, 7A or 7B(1)(s) or (c) is treated as a breach of warranty instead of a breach of condition, unless a contrary intention appears from the agreement). HPFLAS would</p> <p>Proposed section 7C in fact benefits the owner and gives non-consumers a lower level of protection than consumers. In the case of consumers, the listed implied terms are treated as conditions, meaning that breach of those terms will give rise to the right to reject the goods even for slight defect. Whereas, non-consumers will not have a right to reject for slight defects because the implied term is treated as a warranty. These warranties mirror those available to non-consumers under the existing Sale of Goods Act and Supply of Goods Act.</p>

	<p>therefore like to urge MTI to consider withdrawing the</p> <p>Proposed Section 7C from the draft HPA bill.</p> <p>Hire Purchase, Finance and Leasing Association of Singapore (HPFLAS)</p>	
19	<p>The condition implied by Section 7A(6) should be read as the exception and not the rule and we would be grateful if clarification on this can be given. It is further submitted that the word 'particular purpose' can potentially be given a very broad interpretation and it is not clear as to whether 'particular purpose' should be construed in a restrictive sense and clarification as to how this term should be interpreted would be appreciated.</p> <p>Hire Purchase, Finance and Leasing Association of Singapore (HPFLAS)</p>	<p>This provision provides for the special case of fitness for a particular purpose which has been made known to the owner or dealer.</p> <p>Section 6(3) in the existing HPA provides similarly, except that there is an express provision excluding secondhand goods if there is an express statement to the effect and it is proven that the hirer acknowledged the statement in writing.</p> <p>Proposed section 7A(6) is in fact less prescriptive than the existing provision. The implied term is excluded if the circumstances show that the hirer does not rely, or it is unreasonable for him to rely, on the skill and judgment of the owner or dealer. This exception is not limited to secondhand goods and no written acknowledgment is required. New section 7A(5) also provides other means of by which the implied term may be excluded.</p>
20	<p>It is proposed that Section 12C(5) of the draft CPFTA bill be revised to include the following new Section 12C(5)(c) so as to ensure that the potential difficulties faced by the transferor are taken into account:</p> <p>"the relevant circumstances of the transferor when the request to repair or replacement under Section 12C(1) of the Act is invoked."</p> <p>Note:</p> <p>Section 12 C(5):- Any question as to what is a reasonable time or significant inconvenience is to be determined by reference to -</p> <p>(a) the nature of the goods; and</p>	<p>Not accepted. The issues of reasonable time and significant inconvenience merely determine when the consumer can proceed to demand a second tier remedy i.e. reduction in price or rescission. The transferor's incapacity to provide repair/replacement expeditiously to meet the consumer's needs should not delay the consumer from enforcing his rights by alternative means.</p> <p>Moreover, it should be noted that under general law (SGA), if the goods supplied were not in conformity with what was contracted for, the consumer could have enforced his rights to reject the goods (similar to the second tier rights) immediately.</p>

	<p>(b) the purpose for which the goods were acquired.</p> <p>Hire Purchase, Finance and Leasing Association of Singapore (HPFLAS)</p>	<p>This proposal could result in substantial delay to the consumer in enforcing his rights.</p>
21	<p>Please clarify why Section 7, which makes an owner liable for misrepresentation made by a person acting on behalf of the owner, is proposed to be deleted.</p> <p>Consumers Association of Singapore (CASE)</p>	<p>Agree to retain existing section 7. This provision gives the hirer the same rights to rescind the HPA, or to obtain damages for misrepresentations, warranties and statements made by the owner or dealer's agents. Existing section 7 also provides an indemnity for the owner (usually the finance company) against the dealer or the dealer's agents.</p>
<p><u>Scope of Coverage</u></p>		
22	<p>The law should be extended to cover the provision of services where currently there is little recourse for consumers who do not receive the services they have paid for.</p> <p>Moulmein Farrer Park Residents' Committee</p>	<p>The remedies under the lemon law regime are tailored for goods, and are generally inappropriate for services. For example, it is impossible to return the service which has already been rendered.</p> <p>Moreover, one key intent of the Lemon Law regime is to provide recourse for latent defects, which does not arise in relation to the supply of services.</p>
23	<p>Save for used cars, new cars will typically only be delivered after the hire purchase agreement has been executed. In such an instance, the examination referred to in Section 7A(5)(b) of the draft HPA bill can possibly never take place save for a used cars scenario. Clarification as to the applicability of Section 7A(5)(b) to new cars is therefore sought.</p> <p>Hire Purchase, Finance and Leasing Association of Singapore (HPFLAS)</p>	<p>The section applies to both new and used cars.</p> <p>If section 7A(5)(b) is incapable of applying to new vehicles because the consumer does not have an opportunity to examine them, then the exception to the implied term of satisfactory quality under section 7A(5) simply does not apply. The consumer will then retain the benefit of the implied term.</p>
24	<p>Section 12A Interpretation of this Part: "applicable contract" means (c) a contract of hire. Does this mean that leasing of goods, for example, leasing of motorcar and photocopy machine for private use is covered?</p>	<p>No, the intention is to apply the lemon law regime only to contracts for the sale of goods, contracts for the transfer of property in goods (referred to as contracts for transfer) and hire-purchase agreements.</p>

	Consumers Association of Singapore (CASE)	
25	<p>We note that Sections 6 and 7 of the existing Hire-Purchase Act would be either amended or completely deleted from the proposed legislation. In particular, we note that the sub-sections on second-hand goods would be deleted. Please advise whether this means second-hand goods are also subject to the implied condition of satisfactory quality.</p> <p>Consumers Association of Singapore (CASE)</p>	<p>The implied term of merchantability/satisfactory quality applies to secondhand goods under both the existing and proposed HPA:- see section 6(2) of existing HPA, and new section 7A(2) of proposed HPA. The proposed law also recognises that the reduced price reflects the risk that the secondhand goods are more likely to develop faults:- see new section 7A(3) of the proposed HPA.</p> <p>The quality of the goods will not be rendered unsatisfactory by any matter specifically drawn to the attention of the hirer before the agreement is made (section 7A(5)(a)) or, if hirer examines the goods, would be revealed by that examination (section 7A(5)(b)).</p>
<u>Responsibility of Retailer vs Supplier</u>		
26	<p>Some resellers may have their own refund/exchange policies for each of their customers. Such customers may, instead of seeking a refund/exchange from the reseller in reliance of the new regulations, rely on the warranty provided by the manufacturer or authorized distributor.</p> <p>Canon Singapore (Retailer)</p> <p>These provisions should not apply between a buyer and seller where the goods are subject to an underlying product warranty. In this instance, the buyer, who deals as a consumer, has a lateral right against the product manufacturer and the seller should therefore not be caught by the proposed provisions under the new Part III of the Act.</p> <p>StarHub (Retailer)</p> <p>The established practices in the market place will be affected, but without necessarily benefiting the consumer. Manufacturers may</p>	<p>The new Lemon Law provisions do not exclude consumers from their existing rights, including under warranties and exchange policies. That is, consumers can still seek redress from the manufacturer under any warranties or exchange policies of the manufacturer instead.</p> <p>The retailer may seek recourse against his supplier based on his contract with the supplier, or exercise his rights under the Sale of Goods Act as a purchaser in respect of the supplier (i.e. the implied terms for non-consumers under the Sale of Goods Act are likely to apply).</p>

	<p>choose to relinquish their warranty obligations to the consumer, and leave the sellers to directly address customer allegations of non-confirming Goods. Sellers are ill-equipped to do so, and will be forced to enter into back-to-back arrangements (at their own costs as stipulated in Section 12C(2)(b)) with the manufacturers, leading to increased operational inefficiency and higher costs down the chain. These costs will inevitably have to be passed down to the consumers by way of costlier Goods.</p> <p>M1 (Retailer)</p> <p>There is no longer any incentive for sellers to offer 'no questions asked' exchange policy where the Goods are brought back to the seller within 7-10 days of purchase. Generally, transactional flexibility and beneficial consumer-centric initiatives voluntarily offered by sellers to consumers in the market place will be diminished in light of the over-regulation by way of the amendments.</p> <p>M1 (Retailer)</p> <p>It is also noted that cars are often sold to the consumers with warranties provided by the manufacturers, authorized dealers of manufacturers or new and used car dealers. In such a case, the safeguards in the proposed HPA amendments would only serve to add costs without value and facilitate as a duplicate remedy for the consumers.</p> <p>Hire Purchase, Finance and Leasing Association of Singapore (HPFLAS)</p>	
27	<p>In terms of logistics, in lieu of just one bailment (or transfer of possession) of Goods from the consumer to the manufacturer for repairs, there would be two, i.e. one</p>	<p>Lemon Law provisions do not exclude consumers from their existing rights, including under warranties. Consumers can continue to exercise their rights to seek repairs from manufacturers directly.</p>

	<p>from the consumer to the seller, and the other from the seller to the manufacturer, leading to logistical difficulties and added delay to the consumer in the repair of the Goods.</p> <p>M1 (Retailer)</p>	<p>However, the new regulations would allow additional remedies, such as replacement, should a product be defective.</p>
28	<p>In a dispute involving retailer and authorized distributor/service centre, the law should make it clear which party is responsible for the exchange/refund. The danger is that the retailer will direct the consumer to the party issuing the warranty, which is fine provided the distributor in turn does not re-direct the consumer to the retailer on the basis that payment was made there.</p> <p>Consumers Association of Singapore (CASE)</p>	<p>Contractual liability only binds the parties to the contract. If it was the retailer who entered into a sales contract with the consumer, the retailer will be directly responsible for the exchange/refund.</p> <p>The retailer may seek recourse against his supplier based on his contract with the supplier, or exercise his rights under the Sale of Goods Act as a purchaser in respect of the supplier (i.e. the implied terms for non-consumers under the Sale of Goods Act are likely to apply).</p>

Annex B

A key change introduced by the amendments is the introduction of a burden of proof. If a defect is found in a product within six months of delivery, it is assumed that the defect existed at the time of delivery. Unless the retailer can prove otherwise or if the goods have a short life span such as consumables and food, the wider range of remedies provided for in the Lemon Law provisions will apply.

Clearer rules on burden of proof

In the first six months, a consumer could claim that a defect was present at the time of the sale and hence argue that the good was not of satisfactory quality and thus seek redress. If the retailer rejects this view, the consumer could take the matter to court. The judge would then look to the retailer to refute the presumption of unsatisfactory quality with reasonable evidence. The retailer might attempt this by, for example, analysing the good to show it was damaged by the consumer e.g. where leather shoes had not been cleaned, causing the leather to crack.

Consumers are not entitled to a remedy if:

- They damaged the item, or
- They misused it and caused the fault, or
- They tried to repair it themselves or had someone else try to repair it, which damaged the item, or
- The consumer knew about the fault before they bought the goods, or
- They simply changed their mind and no longer want the item.

The amendments also introduce a two-stage framework for consumers when seeking remedies:

Stage 1

- Consumers can ask the retailer to **repair**, or to **replace** the defective product. If the cost of one remedy is disproportionate in comparison or not possible (See Annex C - Example 1), the retailer can choose the other remedy.

Stage 2

- If the retailer failed to repair or replace the goods within a reasonable time or without significant inconvenience to consumer, or if repair and replacement is impossible or if the cost is disproportionate, the consumer may ask for a **reduction in price** (See Annex C - Example 2) or return the product for a **refund**.

Annex C - Examples where consumers may seek remedies

Example 1 - If the customer's request for repair or replacement is not possible or reasonable, retailer may consider refund or discount

- If a table was only worth \$50 and a repair would cost the retailer \$75, then the retailer could decline such a request and offer a replacement, assuming he had a similar model of similar age in stock or had prompt access to one. If he had neither, then he could refuse both repair and replacement and instead provide the discount or refund remedy.
- If the stitching gives way on a pair of trousers, the customer would not be entitled to a replacement if the fault could be repaired within a reasonable time and at little inconvenience to him.

Example 2 - Getting a reduction in price for defective goods

- If a four-year old spin dryer had cost \$99 and a serious defect (which the consumer is able to show existed at the time of delivery) arose two-thirds of the way through its average length of life of 6 years, then the retailer might offer around \$33 as an adequate reduction in price. This is bearing in mind that the consumer was being deprived of one-third of the typical period for which he should have enjoyed the good. Consumers should also take into account the fact that goods tend to depreciate more quickly in the early years of their life-span. If a consumer has had constant problems with a product since it was bought, such that he had never enjoyed any normal benefit from the product, then the retailer might be expected to offer him a full refund of the purchase price.

The examples in Annex C are for illustration purposes and actual application will vary according to the facts and circumstances of the case.

Annex D – Frequently Asked Questions for proposed amendments to the Consumer Protection (Fair Trading) Act and Hire Purchase Act

1. What are “lemon laws”?

“Lemon laws” are laws protecting consumers against defective goods that fail to conform to contract, or meet satisfactory quality or performance standards at the time of purchase, colloquially known as “lemons”.

2. Why is there a need for the proposed amendments?

The proposed amendments make it clearer that a defect found within 6 months is presumed to have existed at the point of delivery. These laws will make the transactional process between buyer and seller more open and transparent, with clearer rules on the burden of proof, and more certainty about the recourses available.

With “lemon laws” in place, there are now additional remedies (e.g. repair and replacement) beyond just rejecting the goods and getting a refund.

The amendments will assure both locals and tourists that the products they buy are of good quality, and improve the image of the retail industry in Singapore. It will also foster good business practices among retailers.

3. What are the recourses under the proposed amendments?

The retailer may first offer to **repair** or **replace** the defective good within a reasonable period of time and without significant inconvenience to the buyer.

However, if repair or replacement is not possible or reasonable (e.g. disproportionately costly), or the repair or replacement was not done within a reasonable period and without significant inconvenience to the consumer, he/she may keep the defective good and ask for a **partial refund**, or return the defective good for a **full refund**. The full refund amount will take into account the state of the good resulting from the consumer’s use.

4. How do you define what is a Lemon or what is a defective product?

The Lemon Law applies when the terms of the sale contract are breached at the point of delivery, e.g. the product does not meet reasonable performance expectations and is not of satisfactory quality. The quality of the product includes aspects such as being fit for its purpose, appearance and finish, freedom from minor defects, safety and durability.

5. For how long are goods covered under the proposed amendments?

If a defect is found within six months of delivery, it is assumed the defect existed at the time of delivery, and the Lemon Law provisions apply, unless the retailer can prove otherwise, or if such a presumption is incompatible with the nature of the goods (e.g. goods with a short life span such as consumables and food which are not expected to last beyond their normal shelf-life).

6. Under what conditions would consumers not be entitled to a remedy?

Consumers are not entitled to a remedy if (i) they had damaged the item; or (ii) they had misused it and caused the fault; or (iii) they had damaged it while trying to modify or repair it themselves or through a third party; or (iv) the consumer had known about the fault before they bought the goods; or (v) they had simply changed their mind and no longer wanted the item.

7. What should retailers note about the proposed amendments?

As required under laws such as the Sale of Goods Act and the Hire Purchase Act, retailers should ensure that the goods they sell match their description or are fit for their purpose as marketed and promoted. Descriptions include information and details on the good that can be found on the label, packaging, posters or any other print material, or given verbally by the sales representatives.

Retailers should point out defects or limitations, if any, to the consumer before the consumer buys the good. The retailer will not be held liable for defects which the consumer is proven to know about before he/she buys the goods. For clarity, the retailer may document such defects and limitations e.g. on the sales contract, invoice or packaging.

8. Are second-hand goods covered under the proposed amendments?

Used goods are covered under the new law, but the law will take into account the age and price paid for the goods to ascertain whether or not a claim of defect is reasonable.